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October 10, 2006

Federal Maritime Commission (FMC)

Mr. Bryant L. VanBrakle / Secretary
800 North Capital Street, NW
Washington, DC 20573

Re: Petition Docket No. P6-08 / Team Ocean Service on Unlicensed Persons Acting as Agents of OTIs

Dear Ladies & Gentlemen,

I respectfully submit my comments and observations regarding the Team Ocean Service petition.

First of all, the way I read and interpret 46CFR Part 515.3 and 515.4, it is clear to me who needs a license and who not, with only one exception: the "Ocean Freight Broker" [515.4(d)]. I have come across this topic a few times in recent years as part of my consulting work, maybe because the wording in 515.2(n) is a little too vague, or possibly could be misinterpreted. I assume that this is the area of activity Team Ocean is addressing in their petition.

So what does 515.2(n) mean? In my, maybe simplistic view, the only authorized service "endorsed" or "implied" by 515.2(n) is sales and marketing functions on behalf of a licensed OTI. Possibly also the booking of cargo or facilitation of the booking of cargo with the OTI, as this is very difficult to "disconnect" from sales in many cases. As I stated in previous comments to the FMC, maritime shipping practices are rapidly changing, and thus it may certainly be time to make changes to the underlying requirements, or at least "fine-tune" them to reflect today's alternate business practices more appropriately and provide clarification to the trade community.

Which brings me to Team Ocean Services and how they compete with other OTIs: From what I understand, Team Worldwide is a "franchise" system, and thus does not own or operate their branch offices. Thus, to be compliant with FMC rules, Team would need to establish branch offices for ocean services (as they have done in recent years), or ensure that their individual franchise agents themselves become/are a licensed OTI under FMC rules. Either method would work just fine.

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To me that's straight forward and exactly what the FMC rules dictate, it is a level playing field for all OTIs competing with Team. Everyone is required to play by the same rules, have the same licensing and bonding requirements in place. And Team Ocean had to "learn this the hard way" as it seems.

But why should Team Ocean now be allowed to operate differently? Obviously they have realized that having a "legal" setup under FMC rules is not "cheap" and does require some financial commitment and investments. And most likely the majority or possibly all of their franchise holders, will never be able to obtain their own OTI license and bond, as they clearly lack the required FMC mandated experience. Not to speak of the additional cost for individual FMC bonding. Team Ocean's comment that they want to "change their model of operations" seems simply a move to cut cost and try and gain an unfair advantage over their competition, as they no longer would have to abide by the FMC OTI rules and bonding requirements.

If allowed to proceed, how would this compare to all the other licensed and bonded OTIs in the USA? Those OTIs would find themselves at a considerable cost disadvantage as they have to pay for additional bonding for each unincorporated branch office or have a separate license and bond in place for each incorporated branch office. And OTIs have spent a great deal of expense in training and education of their employees.

In other words, why should for example Expeditors, UTi, Kuehne & Nagel or D.J. Powers be required to have all this additional expense (and knowledge), when Team Ocean would not be required to do so? If Team Ocean would be allowed to proceed, then all the bonding and licensing requirements for branch offices or affiliated/incorporated branch offices for all OTIs should be eliminated. That's not a good idea in my view.

Thus I find the only services Team Ocean's unlicensed franchise agents should be allowed to offer under the current FMC rules are:

- Marketing of export and import OTI services on behalf of Team Ocean.
- Booking of cargo only with Team Ocean's licensed and bonded head-office, which in turn would provide all other additional OTI services to the exporter and/or importer.
- On export shipments arrange for delivery to the pier, on behalf of Team Ocean's licensed/corporate office and direction, thus performing really only services of a domestic forwarder/trucker or truck broker – which in my view is outside of the FMC rules.

All other OTI services, including booking of cargo with the VOCC or co-load master NVO, preparation of shipping documents, SED/AES filing, issuance of house bill of lading etc. would solely be the responsibility and duty of Team Ocean's head-office or any other regional branch offices properly bonded and licensed under current FMC rules.

Alternatively, as business concepts are most certainly always changing and evolving, I would certainly endorse a concept where a franchised company such as Team Ocean could extend the use of unlicensed agents to “perform OTI duties” to a greater extent, but only if each of these unlicensed agent locations:

- Is known to the FMC and has passed some form of a background check (application fee to cover the administrative expense).
- And a bond rider in the amount of at least \$100,000 or more for each of these locations is obtained and filed with the FMC.

I do not believe that a \$100,000 per unlicensed location is unreasonable; it would be in line with the bonding requirements for foreign NVOCC. Those foreign NVOCC cannot become licensed under the FMC rules and thus post a \$150,000 bond – considerably higher than the bond for domestic licensed NVOCCs. Not to speak of the fact that, they still cannot provide other OTI services in the USA – just NVOCC services, and thus are greatly restricted in their activity.

I therefore strongly recommend that the FMC reject Team Ocean’s petition in its current format and content. If I can be of further assistance or if any clarification is required, please do not hesitate to contact me at any time.

Thank you as always for your continued excellent efforts.

Sincerely,

Albert W. Saphir